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Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono, submitted in accordance with Human Rights Council resolution 5/1.

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Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono, submits his second report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives, United Nations representatives and Palestinian officials in Amman, in connection with the mission of the Special Rapporteur to the region in June 2015. The report addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza.

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I. Introduction

1. The present report is the third submitted by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono, and the second presented to the General Assembly.

2. As a result of continued lack of access to the Occupied Palestinian Territory, the Special Rapporteur conducted his second mission to the region in Amman where, from 9 to 12 June 2015, he met with victims, witnesses, non-governmental organizations, United Nations representatives, Palestinian officials and other interested parties to gather information on the situation of human rights in the Occupied Palestinian Territory. The Special Rapporteur extends his gratitude to the Government of Jordan for its support to his mission.

3. Written submissions were received in addition to the oral submissions and information gathered since his previous reports (A/HRC/28/78, A/69/301 and Corr.1). The Special Rapporteur is extremely appreciative of the briefings, testimonies and documentation that were provided and which, to a large extent, have informed the present report. The issue of the human rights impact of business operating in the Occupied Palestinian Territory, including in settlements, remains of concern and may be taken up outside the scope of the present report, which is subject to limitations of space.

4. In the context of the mission, travel restrictions imposed by the Government of Israel affected the ability of some members of Palestinian non-governmental organizations to meet with the Special Rapporteur. Videoconferencing was used several times, including for meetings with Palestinian non-governmental representatives from Gaza. Challenges such as these typify the obstacles faced by Palestinians who wish to travel abroad, or even between Gaza and the West Bank, including East Jerusalem.

5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine, including the agreement to facilitate access to the Occupied Palestinian Territory.

6. Despite a measure of positive interaction through the Permanent Mission of Israel to the United Nations Office in Geneva, including responses to a number of communications sent by the Special Rapporteur to the Government in which he raised human rights concerns, cooperation and access to the Occupied Palestinian Territory were not forthcoming. The Special Rapporteur encourages the Government of Israel to reinforce its engagement in bilateral dialogue, including through communications.

7. The Special Rapporteur stands ready to visit the Occupied Palestinian Territory and reiterates his request to the Government of Israel to grant him unencumbered access, including meetings with relevant Israeli officials. He continues to believe that cooperation with the mandate is in Israel's interest and would contribute to the effective and even-handed implementation of the mandate. The Special Rapporteur recalls the assurances of access made upon his appointment. It is deeply regrettable that, more than a year after his appointment, those assurances, have not been honoured. It is incumbent on Israel, as on any Member State, to extend cooperation to the holder of a mandate appointed by the United

Nations. Should the prospects of gaining access remain unlikely, the Special Rapporteur will have to reconsider how the mandate can best be served.

8. As reflected in the present report, the Special Rapporteur considers that accurate reporting on allegations of Israeli violations of international human rights law and international humanitarian law in the Occupied Palestinian Territory, in line with his mandate, sometimes requires that contextual factors, including the impacts of actors other than Israel, be reflected. The Special Rapporteur reiterates his unequivocal intention to report independently and objectively as long as he continues to hold the mandate.

9. At the outset, the Special Rapporteur wishes to make two overarching observations regarding the situation of human rights in the Occupied Palestinian Territory. The first concerns the extremely precarious circumstances in Gaza following the escalation of hostilities that took place between 7 July and 26 August 2014. During this period, Israel's military operation in Gaza included thousands of air strikes against Gaza and a ground operation by the Israel Defense Forces from 17 July to 5 August.[1] The Special Rapporteur is aware that Hamas and other Palestinian armed groups fired thousands of rockets and mortars towards Israel during the escalation of hostilities.[2] The Israeli military operation caused immense destruction, death and injury in Gaza and exacerbated an already fragile humanitarian situation, affecting a host of human rights. The current situation results from the cumulative effects of the slow strangulation of the Palestinian economy and livelihoods by the Israeli blockade maintained for over eight years; the deterioration of the physical and psychological well-being of the surviving population of Gaza following three successive escalations of hostilities in six years; and the devastated state of infrastructure, including essential utilities such as water and electricity, as well as housing.[3]

10. Several human rights organizations in Gaza have warned that the desperate situation in Gaza is creating fertile ground for the growth of extremism and violence. A further erosion of living conditions and human rights standards in Gaza will only continue to destabilize the situation. Rapid improvements in respect for international law, and for human rights in particular, are needed to avert this threat to the security of Palestinians and Israelis alike.[4]

11. The second broad concern is the continuing severe consequences for the human rights of Palestinians resulting from the existence and expansion of Israeli settlements in the West Bank, including East Jerusalem. Settlement-related impacts include forced eviction and forcible transfer of Palestinians in connection with land

[1] See the report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 (A/HRC/29/52 and A/HRC/29/CRP.4).

[2] Impacts reported by Israel include six civilian fatalities in Israel. Israel Ministry of Foreign Affairs, *The 2014 Gaza Conflict (7 July-26 August 2014): Factual and Legal Aspects*, executive summary, May 2015, paras. 31-36.

[3] Engaging provisions of international human rights law including articles 6, 11, 12 and 13 of the International Covenant on Economic, Social and Cultural Rights and articles 6, 9 and 12 of the International Covenant on Civil and Political Rights.

[4] "We must not fail in Gaza", joint statement by 30 international aid agencies issued on 26 February 2015.

confiscations; infringements on the rights to housing, water, health and freedom of movement; settler violence; and excessive use of force by Israeli security forces.[5]

12. Several Palestinian government officials and civil society representatives characterized 2014 as a devastating year. Many highlighted the increased number of fatalities and injuries among Palestinians. The tragic escalation of hostilities in Gaza raised numbers exponentially, while deaths and injuries also rose sharply in the West Bank, including as a result of encounters with Israeli security forces.

13. With respect to the right to self-determination under common article 1 of the International Covenants on Human Rights, information provided left the Special Rapporteur gravely concerned that the impacts of settlements, including on the territorial continuity of occupied Palestinian land and on the environment and natural resources, had reached a point where much of the damage might be irreversible.

14. In the context of the long-standing Israeli-Palestinian conflict, there is a distinct risk that relative inaction by the international community will facilitate a continuation of the destructive cycle of human rights violations and violence. On the basis of information received, the Special Rapporteur is convinced that the situation across the Occupied Palestinian Territory is indeed worsening and that violations of the human rights of Palestinians living under Israeli occupation are being further entrenched.

15. The general failure of accountability for past violations of human rights and international humanitarian law in the Occupied Palestinian Territory is a troubling indication that inaction will only lead to more injustices. Countless United Nations resolutions and reports attest to a situation that involves a persistent disregard for international law, including human rights law. The continuation of this reality, and the implications for future generations, cannot be tacitly accepted.

II. Situation of human rights in Gaza

A. Overview

16. It is an indication of the slow progress in the reconstruction of Gaza that as of June 2015, not a single house that was totally destroyed in the previous year's hostilities had been rebuilt, despite the Gaza Reconstruction Mechanism brokered by the United Nations. A year on from the complete destruction of, or severe damage to, approximately 19,000 housing units, some 100,000 people remained displaced.[6] In July 2015, the Special Coordinator for the Middle East Peace Process reported on further Israeli-Palestinian coordination to allow Palestinians in Gaza to purchase construction material for the reconstruction of totally destroyed homes and for new construction.[7]

17. Many pledges made at the International Conference on Palestine: Reconstructing Gaza, held in Cairo in October 2014, remain unfulfilled. However, it

[5] See note 3 above.

[6] Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory, "Internal displacement in the context of the 2014 hostilities", Gaza One Year On: Humanitarian Concerns in the Aftermath of the 2014 Hostilities, July 2015. Available from: gaza.ochaopt.org.

[7] Security Council briefing on the situation in the Middle East, 23 July 2015.

is critical that $3.5 billion of the pledged amount be received to alleviate the situation in Gaza and improve access to basic utilities such as water, sanitation and electricity, through reconstruction of homes and civil infrastructure.

18. In the context of the effects of the blockade, the 2014 hostilities compounded the already dire situation of water and sanitation infrastructure and further destabilized the supply of electricity.[8] As described by one Gaza-based organization, "Gazans wake up every day to wash with salt water and sleep at the end of the day without electricity". Several interlocutors referred to Gaza being in a state of "de-development". An already high unemployment rate soared following the end of hostilities and had reached 43 per cent at the end of the year.[9] Everyone has a right to an adequate standard of living, but people in Gaza are left struggling for basic necessities, without hope and without prospects.

19. The access restricted areas imposed by Israel affect livelihoods and frequent reports indicate excessive use of force by Israeli forces in their enforcement. The exact limits of these no-go zones, adjoining the border with Israel and at sea off the Gaza coast, are uncertain.[10] Agricultural land, schools and homes several hundred metres from the fence with Israel are affected. At sea, fishermen are prohibited from accessing waters beyond 6 nautical miles, although a number of incidents have occurred within that limit.[11] According to the Protection Cluster, the number of incidents in which fishermen were shot at and arbitrarily detained increased during 2014 as compared with the previous year.[12]

20. The impact of the 2014 hostilities on the right to education continues to be felt by children in Gaza.[13] The Palestinian Ministry of Education noted that several hundred schools, including public schools and schools run by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), as well as higher education facilities and kindergartens, were affected. Further repairs and reconstruction continue to be needed. The Special Rapporteur was relieved to hear that a severe funding crisis was alleviated sufficiently to enable UNRWA schools in Gaza to open the school year on 24 August 2015.[14]

B. The blockade

21. The blockade imposed by Israel in 2007 has had a negative impact on a host of human rights of Palestinians in Gaza, including the rights to education, health, work, housing and freedom of movement. Statements made by the Government of

[8] The Gaza power plant provided about one third of Gaza's electricity before it was hit by several Israeli attacks in July 2014 (A/HRC/29/52/CRP.4, paras. 450-455 and 580-584).

[9] International Monetary Fund, "West Bank and Gaza: report to the Ad Hoc Liaison Committee", 18 May 2015, p. 5.

[10] Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory, *Humanitarian Bulletin: Monthly Report*, May 2015, p. 10.

[11] The Oslo Accords provide for Palestinian use of 20 nautical miles.

[12] "Update on access restricted areas, in the Gaza Strip, January-December 2014", issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on behalf of the Protection Cluster.

[13] Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory, "Repair and reconstruction of schools in Gaza", Gaza One Year On, April 2015.

[14] Statement by UNRWA, 19 August 2015. Available from: www.unrwa.org/newsroom/official-statements/unrwa-declares-school-year-open.

Israel upon imposing the blockade referred to control by Hamas over Gaza following the elections and rockets fired from Gaza towards Israel.[15] In maintaining the blockade, Israel continues to raise security concerns. The blockade severely restricts imports and exports abroad and transfers of goods between the West Bank and Gaza and was also explicitly intended to "reduce the supply of fuel and electricity".[16] In addition, Israel further tightened restrictions on the movement of Palestinians in and out of Gaza.

22. The blockade constitutes collective punishment of the people of Gaza, contrary to article 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (see A/69/327 and A/HRC/28/78). In addition, in terms of Israeli and Palestinian security, while the blockade has been in force, three escalations of hostilities have taken place. It is clear that the main result of the blockade has been to undermine the human rights of the people in Gaza and to intensify their suffering. The Special Rapporteur remains unconvinced by any security-based argument against lifting the blockade in the light of the unconscionable harm, in contravention of international law, its continuation is causing in Gaza. Other measures that are in accordance with its obligations under international law, such as screening goods, should be employed by Israel to address security concerns without severely eroding the human rights of Palestinians and, as noted by the United Nations Conference on Trade and Development, threatening the economic viability of Gaza (TD/B/62/3, para. 60).

23. In imposing the blockade, the Government of Israel stated that it sought to take into account "humanitarian aspects relevant to the Gaza Strip" and "to avoid a humanitarian crisis".[17] It is now clear that the blockade is a primary factor holding Gaza fast in its current humanitarian crisis, with many people displaced in 2014 still without homes to return to, electrical power cuts of 12-16 hours daily,[18] more than 90 per cent of the water unfit for human consumption, an estimated 80 per cent of its people receiving aid and a 39 per cent poverty rate. Efforts undertaken by Israelis and Palestinians to coordinate efforts towards reconstruction have been insufficient to address the issues; Israel holds the master key to relieving the situation by lifting the blockade and the Special Rapporteur urges Israel to do so.

C. Right to health

24. Some 2,250 Palestinians were killed in Gaza during the 2014 hostilities, almost two thirds of whom were civilians (A/HRC/29/52, para. 20), and it is estimated that 10 per cent of the more than 11,200 Palestinians injured will be permanently disabled, including up to a thousand children (A/69/926-S/2015/409, para. 88). A member of an international medical organization observed to the Special Rapporteur that, in the aftermath of the hostilities, "Many severely injured civilians were desperately trying to rebuild their lives but were faced with the stark

[15] Israel Ministry of Foreign Affairs, "Security Cabinet declares Gaza hostile territory", 19 September 2007.

[16] Ibid.

[17] See note 15 above.

[18] Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory, "The humanitarian impact of Gaza's electricity and fuel crisis", Gaza One Year On, July 2015.

reality of total immobility, at least temporarily until their treatment and physiotherapy were completed, little shelter and no source of financial income."

25. The 2014 escalation of hostilities was unprecedented in duration, fatalities and injuries, and scale of destruction in Gaza. However, its impacts on the health of the population cannot be viewed in isolation from the impacts of previous escalations and with previous Israeli military operations in 2008/09 and 2012 that resulted in thousands of casualties as well as destruction of, and damage to, homes and civil infrastructure. The health situation is also deeply strongly influenced by the crippling effects of the blockade on the economy and on the state of essential infrastructure in Gaza. A Palestinian doctor at a major hospital in Gaza assessed health care in Gaza as "getting worse day after day", citing factors including the blockade, poverty and unemployment, and noting that "most if not all health indicators are deteriorating".[19]

26. A representative of the Palestinian Ministry of Health spoke of the "unseen effects" on the population, especially children, of repeated hostilities. According to one international medical organization, even prior to the events of 2014, "many children in Gaza suffered from post-traumatic stress syndrome as a result of previous attacks and political violence". Following the hostilities, almost 425,000 children were estimated to be in need of immediate psychosocial support after having experienced war, including having fled or lived through attacks on their homes and suffering injuries themselves and the death or injury of family and friends.[20] The communities in Gaza that need to nurture these children back to health following physical and psychological trauma are themselves devastated.

27. Significant public health risks result from the living conditions of the substantial number of displaced persons, including contaminated water and sewage and wastewater flowing into the environment because of poor and damaged sanitation infrastructure, increasing the risk of disease.[21] Moreover, thousands of explosive remnants of war in the rubble of destroyed homes and other infrastructure remain latent threats (A/HRC/29/CRP.4, para. 575).

28. The Health Cluster in the Occupied Palestinian Territory has noted that "from day one of the [2014] conflict, health facilities have not been spared from destruction".[22] Thirteen public and private health facilities were destroyed and 104 facilities, including hospitals, clinics and pharmacies, were damaged during the escalation of conflict.[23] The Special Rapporteur received detailed information on several cases alleging violations by Israel of international humanitarian law and international human rights law in attacks on hospitals and ambulances and obstruction of medical evacuations. Rehabilitation of medical facilities has been slowed by lack of construction material and shortage of funding. Damages for loss

[19] Interview conducted by an international medical organization approximately one year after the 2014 hostilities.

[20] Office for the Coordination of Humanitarian Affairs, *Humanitarian Bulletin: Monthly Report*, October 2014.

[21] Health Cluster, *Gaza Strip: Joint Health Sector Assessment Report*, September 2014, section 5.8.

[22] Ibid., section 4.1; on coordination in the health sector, see section 6.4.

[23] Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory, "Reconstruction of health sector facilities impaired by shortages of materials and funding", Gaza One Year On, April 2015.

of infrastructure and equipment for the health sector alone have been estimated at $23,983,168.[24]

29. The lack of clean water makes it difficult to sterilize medical equipment and the unreliable electricity supply negatively affects sensitive medical equipment. About 50 per cent of the medical equipment is not functioning for various reasons, including the inability to obtain spare parts for or adequately maintain the equipment. The Palestinian Ministry of Health pointed out to the Special Rapporteur its efforts to supply thousands of litres of fuel every month to power life-saving equipment such as dialysis machines. Chronic shortages of medical supplies, reported in mid-2015, included shortages of about 30 per cent of essential medicines and almost 40 per cent of medical disposables such as gloves and needles. According to article 55 of the Fourth Geneva Convention, as the occupying Power, Israel "has the duty of ensuring the ... medical supplies of the population ... if the resources of the occupied territory are inadequate".

30. It is in the context of damaged and destroyed facilities and severe shortages of equipment and medicines that the health sector in Gaza must cope with the increased caseload of physical and psychological traumas resulting from the hostilities. International aid[25] and the tenacity of Palestinian health workers are critical factors keeping the health sector in Gaza afloat. Lack of medical supplies and unpaid salaries of more than 4,500 health workers in Gaza, who have generally continued to work, are linked to the financial and political situation of Palestinian authorities in the West Bank and Gaza, which in turn is negatively affected by the blockade and other occupation-related policies, including the withholding of tax funds by Israel.[26] While coordination, including of foreign aid, salaries and supplies, are also challenges facing Palestinian authorities, the Health Cluster in the Occupied Palestinian Territory observes that "it will not be possible to effectively rebuild the Gaza health sector while the Israeli blockade remains in place".[27]

31. The state of the health sector in Gaza drives referrals by the Palestinian Ministry of Health and hospitals in Gaza for specialized care in the West Bank, including East Jerusalem, and in Israel, as well as abroad. The positive efforts by Israeli coordinators (Coordinator of Government Activities in the Territories Unit) to facilitate individual medical transfers at the Erez crossing with Israel have been noted.[28] Figures provided by WHO show an increase of 33 per cent in applications for permits for medical treatment between 2013 and 2014.[29] However, the percentage of permits to cross through Erez for medical treatment that have been approved by the Israeli authorities decreased from 88.7 per cent in 2013 to 82.4 per cent in 2014 and further to 81.6 per cent in 2015. The Special Rapporteur is concerned about the relatively high percentage of persons who are denied access to appropriate health care outside Gaza by Israeli-imposed movement restrictions,

[24] World Health Organization (WHO) briefing, June 2015, referencing the Detailed Needs Assessment and Recovery Strategy for the Health Subsector, April 2015.

[25] WHO, "Report of a field assessment of health conditions in the occupied Palestinian territory", document WHO-EM/OPT/006/E, pp. 15-16.

[26] Susan Power and Nada Kiswanson van Hooydonk, *Divide and Conquer: A Legal Analysis of Israel's 2014 Military Offensive Against the Gaza Strip* (Ramallah, Al-Haq, 2015).

[27] *Gaza Strip: Joint Health Sector Assessment Report*, p. 4.

[28] WHO, document WHO-EM/OPT/006/E, p. 9.

[29] A contributing factor is the decline in referrals to Egypt since the restricted access/closure of the Rafah crossing in 2013. Ibid.

especially as the dire situation of the health sector in Gaza is to a large extent due to Israeli measures.

32. While both Palestinians and Israelis suffered tragic losses during the escalations of conflict in recent years, the people who undeniably bore the brunt of the hostilities in terms of the volume of fatalities, injuries and sheer destruction still cannot heal. It is a fact that the blockade keeps the Gaza health sector in a state of dependency, on crutches donated by the international community.

III. Situation of human rights in the West Bank, including East Jerusalem

A. Settlements

33. Israeli policies and practices related to settlements continue to be central to most violations of the human rights of Palestinians in the West Bank, including East Jerusalem, and put immense pressure on Palestinians to leave their homes and lands, especially in Area C and East Jerusalem, where most settlements are concentrated. Reportedly, in 2014, construction was started on some 1,300 housing units. Although this was less than in the previous year, the number of tenders issued in 2014 for new settlement construction (almost 4,500 units) was greater than in previous years, indicating further expansion in the future.[30]

34. Article 49 of the Fourth Geneva Convention prohibits the transfer by the occupying Power of its civilians into occupied territory. By the same article, individual or mass forcible transfers of protected persons are prohibited, except if their security or imperative military reasons requires evacuation within the occupied territory. Thus, the illegality under international humanitarian law of Israeli settlements and forcible transfers of Palestinians is well established.

35. Dividing the West Bank into Areas A, B, and C under the Oslo Accords entailed a graduating level of Israeli/Palestinian control, from mainly Palestinian control in Area A to full Israeli control in Area C, which covers more than 60 per cent of the West Bank. The Palestinian Ministry of the Interior informed the Special Rapporteur of cases of emergencies, such as fires or traffic accidents, especially in Area C, where Israeli authorities did not act and prevented the Palestinian civil defence from providing assistance.

36. While the exact number of settlers living in the West Bank is unknown, estimates tend to range from 500,000 to 600,000 people, about one third of them in East Jerusalem. When compared with the Palestinian population of some 320,000 in East Jerusalem and some 300,000 in Area C, and the almost exclusive control exercised by Israel over matters including law enforcement, planning, water allocation and construction, the vulnerability of Palestinians in these areas is apparent.

37. The destruction of homes and livelihood structures is one factor leading Palestinians to leave their land and move to areas where Israel exerts less control in

[30] Information provided by the Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory, referencing figures from the Israeli Central Bureau of Statistics for building starts and Peace Now for tenders.

Areas A and B. The Israeli planning and zoning regime has been widely criticized as discriminatory against Palestinians. The majority of land in Area C has been designated either specifically for settlements or as State land, closed military zones, nature reserves or for other purposes. While 30 per cent of the remaining land is ostensibly available for construction by Palestinians, it is reported that as building depends on prior approval of plans by Israel, in effect, less than 1 per cent of the land is available for that purpose. Consequently, many Palestinians are left with no option but to build without the required permit.

38. The existence or lack of a building permit does not alter the fact that Israel is prohibited from destroying private Palestinian property.[31] According to information received, between June 2014 and June 2015, 524 Palestinian structures, including homes, schools, water cisterns and animal pens, were demolished by Israeli authorities in Area C and East Jerusalem. Reportedly, in the first half of 2015, there was a 37 per cent increase in the destruction of donor-funded structures provided to Palestinians as humanitarian assistance. Demolitions give rise to a host of human rights concerns, including violations of the right to an adequate standard of living, including food and housing, and the rights to work and education.

39. Regrettably, there appears to be little legal protection for Palestinians facing demolition orders. The village of Susiya, in Hebron Governorate, is a case in point. All of its 170 structures located in Area C,[32] from homes to animal shelters, schools and latrines, have received demolition orders. While the plan to further develop the nearby settlement of Susya has been accepted, attempts by the Palestinian villagers to gain approval from the Israeli authorities for planning schemes, a prerequisite for applying for building permits, have failed. Even while a petition against the rejection of the village's planning scheme was pending before the Israeli High Court of Justice, the Court refused to order an interim injunction freezing demolitions.

40. The disparity between the amounts of water allocated to Palestinians and to settlers continues to be a central factor in settlement expansion and displacement of Palestinians. On average, Israeli settlers consume 369 litres per capita per day for domestic use, while Palestinians consume 70 litres (A/68/513, para. 38). Interlocutors highlighted the fact that settlements tend to be located close to water sources. A youth group from the Jordan Valley explained that Israel controls most water resources, including West Bank aquifers and wells, and noted that Israelis drilled deep wells with powerful pumps, depleting local Palestinian wells and springs. According to the non-governmental organization NGO Monitor, the allocation of water is in line with the Oslo Accords and water projects are subject to approval by the Israeli/Palestinian Joint Water Committee. However, as reported by the Secretary-General, despite the existence of this committee, "in practice ... the Israeli water management system and policies in place discriminate against Palestinians" (A/68/513, para. 38). This corresponds with information received that settlements, especially in the fertile Jordan Valley, enjoy an ample water supply and can grow water-intensive crops, while yields from Palestinian agriculture in the area are negatively affected by limited access to water. In addition, the Palestinian Ministry of Agriculture informed the Special Rapporteur of destruction and

[31] This prohibition (article 53 of the Fourth Geneva Convention) applies unless an absolute necessity for military operations exists.

[32] Part of the village is in Area B.

demolitions of agricultural assets, including wells and irrigation lines, by settlers and by Israeli authorities.

41. A particularly vulnerable group, highlighted by the Special Rapporteur in a previous report (A/HRC/28/78) and a press release,[33] is the Bedouin communities in Area C. Plans by the Israeli Civil Administration provide for the eviction and transfer of individuals and families from some 46 communities resident in the central West Bank, including the East Jerusalem periphery, to three Government-designated sites in the Jerusalem and Jericho Governorates of the West Bank. The three sites are Fasayil, Nuweima and Al-Jabal, the last associated with health concerns owing to its location next to a refuse dump. Reportedly, on 5 May 2015, representatives of the Israeli Civil Administration entered Abu Nwar village and sought to persuade residents to sign a transfer agreement for their "relocation" to Al-Jabal, at the same time allegedly informing residents that they would be moved whether they signed or not.

42. On 19 August 2015, United Nations officials called for an immediate freeze on demolitions in the West Bank after 22 structures were demolished in 4 of the 46 communities affected by the plan. The strategic implications and the link with the E1 settlement project were highlighted: "These demolitions are occurring in parallel with settlement expansion. The relocation plan for these communities would effectively remove Palestinian presence in and around the planned E1 settlement project".[34]

43. A representative from Khan Al Ahmar, a village affected by the August 2015 demolitions, briefed the Special Rapporteur, explaining that during April 2015, an unmanned aerial drone was observed several times a week carrying out surveillance of the community. Residents also felt that they were being watched by settlers who entered the community, sometimes shining their vehicle headlights at homes during the night. The combined effect of the transfer plan, a lack of genuine consultations, threats and implementation of demolition orders, restrictions on movement, surveillance and settler violence creates a coercive environment that puts pressure on Palestinians to move. While forced eviction and forcible transfer are contrary to international law, communities face the stark reality that resisting Israeli demands means enduring infringements of their rights to security of the person, health, freedom from arbitrary interference with privacy, family and home, freedom of movement and residence and the right to an adequate standard of living for themselves and their families, including housing, water and sanitation.

44. The Special Rapporteur is deeply dismayed that despite clear, repeated and unequivocal calls on Israel by the international community, including the Secretary-General (see A/69/348), not to contravene international humanitarian law and international human rights law by implementing these plans, they are being advanced, with devastating consequences for the affected communities.

45. The Special Rapporteur was also briefed on settlement expansion in the Gush Etzion bloc, which affects several villages in the Bethlehem area. The planned route

[33] "UN human rights expert urges Israel to abandon plans to transfer Bedouins in the occupied West Bank", 5 June 2015.

[34] UNRWA, "UN officials call for an immediate demolitions freeze in the West Bank", 19 August 2015.

of the wall, which has been declared illegal by the International Court of Justice,[35] runs approximately 56 km into Bethlehem Governorate. During his visit, the Special Rapporteur was stunned to see that in 2015 the wall threatens to cut straight through the length of Wadi Fukin village, located in Areas B and C and home to a majority refugee population. In 2014, Israeli authorities confiscated 1,500 dunums — half of its remaining land — from this farming village, famous for its irrigation infrastructure.

46. Wadi Fukin is one of four villages with a total population of about 22,000 Palestinians affected by three nearby settlements of approximately 50,000 Israelis. According to UNRWA, groundwork for the construction of 218 housing units for the settlements on land seized from Wadi Fukin is under way. The Special Rapporteur saw photographs showing the Betar Illit settlement towering over Wadi Fukin in the valley below, whereas before the year 2000 the hill was bare. He also saw photographic and video documentation of sewage from the settlement flowing into the village and was briefed by the village mayor on how land and water sources had been contaminated, affecting produce which farmers could no longer sell. Reportedly, the contamination also led to diseases among the villagers. UNRWA reported numerous incidents of harassment of Wadi Fukin residents, including armed settlers visiting irrigation pools and intimidating villagers, noting that "the Israeli authorities persistently failed to prevent or reduce" such incidents.

47. The phenomenon of settler violence is another factor contributing to displacement of Palestinians. The Special Rapporteur is aware of high tensions between settlers and Palestinians and abhors any violent attack. The arson attack on the Dawabsha family home in the West Bank village of Duma on 31 July 2015, which led to the death of a toddler and his parents, leaving his four-year-old brother an orphan, appears to be a tragic consequence of settlement advancement and lack of accountability for settler violence, as well as the illegal actions of the perpetrator.

48. During the first six months of 2015, a monthly average of 7 incidents of Palestinian casualties and 11 incidents of damage to property as a result of settler violence was recorded. In 2014, there were 331 recorded incidents of settler violence against persons or property.[36]

B. Excessive use of force

49. Heightened tensions and clashes in the West Bank, including East Jerusalem, in mid-2014 exacerbated existing concerns over excessive use of force against Palestinians by Israeli security forces (A/HRC/28/78, paras. 41-47). Tensions spiked following the murders of Israeli and Palestinian youths in June and July 2014 and in the context of the escalation of hostilities in Gaza. Fifty-six Palestinians were reported killed in the context of confrontations with Israeli forces in the West Bank in 2014, which were especially violent in the months of June, July and August, and close to 6,000 were injured.[37] The total number of fatalities in 2014 was double the figure of 2013 and more than six times as high as in 2012. Fatality figures from the

[35] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004*, p. 136.

[36] Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory, *Humanitarian Bulletin: Monthly Report*, July 2015, annex.

[37] Ibid., December 2014, p. 9.

first quarter of 2015 indicate a return to levels comparable with those of previous years, although serious concerns remain over fatalities and serious injuries resulting from actions by Israeli security forces, including increased use of live ammunition during protests in circumstances that appear to pose no imminent threat.[38]

50. In one incident reported to the Special Rapporteur, on 27 February 2015, during the annual "Open Shuhada Street" non-violent protest in Hebron, Israeli security forces allegedly used live ammunition as well as tear gas, stun grenades and rubber bullets. Among those injured were six Palestinians, who sustained injuries from live ammunition. UNRWA reported that it "continues to regularly document cases of Palestinian demonstrators being injured by live ammunition employed by Israel security forces". Refugee camps located close to settlements and the wall, areas with a heavy Israeli security presence, are particularly exposed. UNRWA highlighted concern over incidents involving Israeli security forces in the Jalazone refugee camp, including cases of teenagers severely injured by live bullets. In one reported case, on 18 March 2015, during a demonstration in Jalazone refugee camp, 21-year-old Ali Safi was shot with live ammunition allegedly fired by an Israeli soldier from a distance of approximately 70 metres; he later succumbed to his injuries.

51. The Special Rapporteur is also concerned about the use of so-called "less-lethal weapons", which can be, and have been, used with fatal consequences. Several interlocutors mentioned the case of the Palestinian physician in Abu Dis who died in May 2014 after inhaling tear gas reportedly fired by Israeli security forces.

52. According to the Association for Civil Rights in Israel, in mid-2014, Israeli officers began using a new, harder kind of "sponge" bullet during riots and demonstrations in East Jerusalem. Testimonies collected in 10 such cases between July 2014 and May 2015 documented serious injuries. Although regulations stipulate that sponge bullets may not be used against minors, among the victims in these cases were six children, including one child as young as six. Their injuries reportedly included facial fractures and loss of an eye.

53. One of these incidents occurred in March 2015 in East Jerusalem, when a boy of about 12 years of age was allegedly shot by Israeli security forces with a sponge bullet while on his way home from school. In the affidavit provided by Al-Haq, the boy relates that he hid between parked cars as at least 25 shots were fired by Israeli officers to prevent the schoolchildren from approaching parts of the wall that were under construction. After he emerged from his hiding place the boy was hit by a shot in the left eye, which had to be surgically removed.

54. The Special Rapporteur strongly reiterates his recommendation that Israel ensure compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990. There must be no impunity for excessive use of force.

55. The use of so-called "skunk water" in the West Bank, including in East Jerusalem, has a worrying impact on rights, including health and work, and the freedoms of expression and peaceful assembly.[39] This foul-smelling liquid,

[38] On the increased use of live ammunition, including in "crowd-control" situations, see also A/HRC/29/52, para. 70.

[39] Who Profits Research Center, *Proven Effective: Crowd Control Weapons in the Occupied*

composed of water, yeast and sodium bicarbonate, can cause skin and eye irritation, nausea and abdominal pain.[40] The lingering sewer-like odour is also a source of embarrassment to those whose person or property is sprayed. While it was designed to disperse crowds by spraying from a distance, sources describe skunk being sprayed by Israeli forces directly at homes and businesses, that is, not to disburse crowds, but in an apparently punitive manner. During tense periods between July and December 2014, the Association for Civil Rights in Israel described how "streets in almost every neighbourhood of East Jerusalem had been covered in tremendous amounts of skunk liquid. Most of the liquid was aimed towards residential properties, cars and shops".

C. Right to health

56. Restrictions on movement imposed by Israel are a central obstacle to access by Palestinians to health-care services in urban centres, especially in East Jerusalem, where several hospitals are located. Area C land, where movement is especially restricted by checkpoints, road gates and roadblocks, often surrounds "islands" of Areas A and B land.

57. Palestinians living in Area C are especially vulnerable to negative impacts on their right to health. This includes many rural Bedouin communities who typically also have high poverty rates and lack local health facilities. Access is also especially difficult in the old city of Hebron, where Palestinians live in close proximity to a large settler population. A survey undertaken by WHO in 2011 of 102 households in the old city of Hebron showed that 63 per cent of them had to cross Israeli checkpoints to access health services. One Hebron resident described to the Special Rapporteur his personal experiences of Palestinian ambulances either being prevented from entering the area to attend to emergencies or experiencing long delays owing to the need to coordinate Israeli agreement for access.

58. Physical barriers to access to health are accompanied by procedural barriers. Following referral, under the permit regime Palestinians who need to access health services, which are often located in East Jerusalem, must seek Israeli approval through Palestinian Coordination offices. According to WHO, about 20 per cent of patients who apply are denied access, either because of refusal of their requests or lack of response. A 2014 study revealed that 4 in 10 patients and those accompanying them who were denied permits by Israeli authorities were rejected for "security reasons" or with no reason given. Also affected by the permit regime are more than 1,000 Palestinian health workers who live elsewhere in the West Bank but work in East Jerusalem and are regularly required to apply for permits to access their workplace.

59. Other impacts of occupation policies and practices on the right to health include injuries and fatalities related to settler violence and encounters with Israel security forces. Concerns were also raised about the health implications of pollution of Palestinian crops by untreated waste from settlements and from Israeli factories. The Palestinian Ministry of Environment, among others, expressed serious concern

Palestinian Territories (Tel Aviv, April 2014).

[40] See www.skunk-skunk.com/image/users/121755/ftp/my_files/MSDS_Skunk.pdf?id=3225191.

about hazardous waste, including chemical materials and electronic rubble, from Israel and settlements being "dumped" in the West Bank.

60. Nearly half a century of occupation and practices related thereto entailing humiliation and loss of control over activities of daily life have also had a detrimental impact on the mental health and well-being of the Palestinian population. People live in the climate of insecurity fostered by encroaching settlements, threats and execution of home demolitions, settler violence, excessive use of force by Israeli forces, the wall, restrictions on movement and on access to education, work, land and water, along with the power exerted by the Israeli military justice system over children and adults in the community.

D. East Jerusalem

61. East Jerusalem represents Palestinian aspirations for a future capital of the State of Palestine and fulfilment of the right to self-determination. Although Israel annexed East Jerusalem, in contravention of international law (Security Council resolutions 476 (1980) and 478 (1980)), representatives of the Negotiations Affairs Department of the Palestine Liberation Organization, described East Jerusalem, in the context of a two-State solution, as the political, socioeconomic, cultural and spiritual heart of Palestine, geographically linking the northern and southern parts of the Occupied Palestinian Territory.

62. The ability of Palestinians to maintain their "permanent residency" status in East Jerusalem is continually challenged. According to Palestinian representatives, the Palestinian population in East Jerusalem was 36 per cent of the total population of Jerusalem at the end of 2014. Several interlocutors described the Israeli policy of maintaining a demographic ratio in Jerusalem of about 70 per cent Jewish and 30 per cent Palestinian; the Local Outline Plan — Jerusalem 2000 indicates a ratio of 60:40. This plan, originally proposed in 2004, notably sets out policies for the whole of Jerusalem. It is a troubling indication of the mindset of the Israeli administration that there is no reference to Palestinians and East Jerusalem in the plan, which refers to "Arab residents in the eastern part of the city".[41]

63. Since 1967, the residency status of more than 14,000 Palestinians was reportedly revoked by Israel, with about half of that number revoked between 2007 and 2013. Under the "centre of life" policy Palestinians must continually prove their residency, by providing documentation such as property tax receipts or water and telephone bills to the Israeli Ministry of the Interior to preserve their status. According to the Palestinian Ministry on Jerusalem Affairs, the financial situation of many in East Jerusalem is strained, with 72 Israeli taxes levied on Palestinian residents. In addition, residency status is not automatically conferred through marriage or to children of permanent residents. As a result, a number of Palestinians live in East Jerusalem without formal status and, consequently, the accompanying entitlements. According to Al-Haq, between 2002 and mid-2015, the Israeli Ministry of the Interior rejected more than 3,300 of some 11,000 applications for family reunification in East Jerusalem. In addition, about a quarter of child registration applications were denied by Israeli authorities between 2002 and March 2015, and several thousand Palestinian children are without residency status.

[41] See http://pcc-jer.org/arabic/Publication/jerusalem_master_plan/engchapt/Intro.pdf.

64. Because of Israeli settlements, the wall and the permit regime, East Jerusalem is increasingly being isolated from the rest of the West Bank. Some 140 km of the wall are reportedly within the municipality of Jerusalem. This has the effect of cutting segments of East Jerusalem communities off from the rest of the city, leaving them on the West Bank side of the wall and dependent on access, through Israeli checkpoints, to essential services such as health and education. Several West Bank communities and East Jerusalem suburbs that were previously closely connected to the city now find themselves "walled out".

65. Israeli planning and zoning policies restrict the ability of Palestinians in East Jerusalem to build. Within the municipal borders of Jerusalem as defined by Israel, only 13 per cent of the land area of East Jerusalem is available for Palestinian use following the allocation of 35 per cent for settlements, 30 per cent left "unplanned" and 22 per cent reserved as "green areas". Even if land were available, purchasing a permit to build or expand housing is beyond the means of most people, forcing many Palestinians to build without a permit and risk demolition by Israeli authorities. According to Palestinian representatives, an estimated 220,000 Israeli settlers live in some 55,000 housing units in East Jerusalem while about 321,000 Palestinians live in some 50,000 housing units. The presence of Israeli settlements within East Jerusalem creates a tense environment and increases the risk of settler violence.

66. In addition to the threat of demolition, Palestinian homes are also at risk of being taken over by settlers. With respect to one such case (see A/HRC/30/27, case No. ISR 1/2015), the Special Rapporteur, in a joint communication of 30 April 2015, raised concerns with the Government of Israel over an order to evict a Palestinian family from their home in the old city of East Jerusalem. The order had been issued following a legal challenge by settlers claiming that the family had abandoned the property. It appeared that the family was not afforded due process to refute the claim and that attempts were made to forcibly evict the family, contrary to international humanitarian law and international human rights law. The Special Rapporteur regrets that to date no response has been received, and he urges the Government of Israel to refrain from such forced evictions.

67. Linked to the discriminatory planning and zoning is the shortage of some 1,500 classrooms for Palestinian pupils, which forces Palestinian schools to rent apartments to serve as classrooms.[42] Children who are residents of East Jerusalem are entitled to free education under Israeli law, but several thousand children are not enrolled in school. Some parents pay for private education owing to overcrowded and substandard facilities in Palestinian schools; others enrol their children in Israeli-run schools where they must follow the Israeli curriculum. Despite Israel's obligation, under article 50 of the Fourth Geneva Convention and article 13 of the International Covenant on Economic, Social and Cultural Rights, to provide access to education, several Palestinian-run schools and facilities such as playgrounds are threatened with demolition orders or cannot be built because they have not been granted a building permit.

68. The Special Rapporteur is gravely concerned about policies linked to Israeli settlements and aims to achieve a particular demographic balance in Jerusalem. These work to stifle the natural growth of the Palestinian population in East

[42] Figure provided by the Palestinian Ministry of Education. See also http://www.acri.org.il/en/wp-content/uploads/2015/05/Jerusalem-Infographic-Acri-English-3.png.

Jerusalem, eliminate the possibility for most Palestinians of moving there and put pressure on Palestinians to leave. They affect all aspects of Palestinian life, including the rights to freedom of movement, adequate housing, access to education and health services, respect for family life and freedom from discrimination.

IV. Prisoners and detainees

69. According to Addameer Prisoner Support and Human Rights Association, as of April 2015, 414 Palestinians were being held under administrative detention, without charge or trial, under six-monthly orders which can be renewed indefinitely. Among them were seven members of the Palestinian Legislative Council. This group initially included Khalida Jarrar, who, several non-governmental organizations asserted, was being held because of her political activities and her role as a prominent advocate for Palestinian human rights. While Mrs. Jarrar continued to be held at the time of drafting, on 15 April 2015, charges were brought, although concerns over whether she would receive a fair trial remain.[43]

70. Two Israeli legislative initiatives affecting the situation of Palestinian prisoners and detainees are notable. On 30 July 2015, in the face of warnings, including by several independent experts,[44] that it was incompatible with human rights standards, the Knesset passed a law allowing for the force-feeding of prisoners and detainees on hunger strike.[45] The measure is expected to affect Palestinian prisoners, especially those under administrative detention, and uses cruel and inhuman treatment, removing the personal autonomy of those who would put their lives on the line in peaceful protest.

71. In an amendment to the Penal Code adopted on 20 July 2015, those convicted of throwing stones or any other objects at moving vehicles could face up to 20 years' imprisonment.[46] While not condoning stone-throwing, whether by settlers or Palestinians, the Special Rapporteur is concerned at these severe sentences, especially in the light of serious questions of adherence to fair trial principles and due process guarantees for Palestinians accused under the Israeli military justice system. Even without proof of harmful intent by stone-throwing, the revised law provides for sentences of up to 10 years' imprisonment. The Special Rapporteur is concerned about the potential effect of such provisions on minors, as most of those charged with stone-throwing are Palestinian children. In both these laws, it seems that security considerations have been invoked as a blanket justification for entrenching in law provisions that lead to violations of the human rights of Palestinians.

72. The Special Rapporteur met a 19-year-old from Hebron who claimed to have been wrongfully accused of stone-throwing and that Israeli forces had refused to

[43] Amnesty International, press release, 28 August 2015. Available from: www.amnesty.org/download/Documents/MDE1523502015ENGLISH.pdf.

[44] OHCHR, "UN experts urge Israel to halt legalization of force-feeding of hunger-strikers in detention", press release, 28 July 2015 and "Force-feeding is cruel and inhuman — UN experts urge Israel not to make it legal", press release, 25 June 2014.

[45] The Knesset, "Knesset passes law to prevent damages caused by hunger strikes", press release, 30 July 2015.

[46] The Knesset, "Knesset approves harsher punishments for stone throwers", press release, 21 July 2015.

check closed-circuit television footage that would have corroborated his account. The Special Rapporteur was moved by the seeming hopelessness of the situation of this young man, who had no real prospects for challenging the charge, and the implications for his future. The young man belonged to Youth Against Settlements, an organization which insists on non-violence in protesting the occupation and settlements. In their briefing to the Special Rapporteur, other members of the organization emphasized that they believed in the right to life of Israelis and Palestinians and that they rejected violent attacks, irrespective of who carried them out.

73. In June 2015, more than 5,400 Palestinians were being held by Israel.[47] The majority are held in prisons within Israel rather than in the Occupied Palestinian Territory, contrary to article 76 of the Fourth Geneva Convention. In addition to other restrictions on family visits, this makes it difficult for family members to visit prisoners and detainees. While most prisoners and detainees are adult men, women and children are also affected, either as detainees themselves or members of the families of detainees. It has been noted that infrequent or lack of contact with parents, relatives and friends has a significant negative effect on the mental health of prisoners.[48] According to Addameer, since 1967, up to 20 per cent of the population has at some point been detained by Israeli authorities.

74. Reports regarding the treatment of Palestinian prisoners and detainees held by Israel noted the prohibition under international law of torture or cruel, inhuman or degrading treatment and referred to the use of "stress positions", beatings, solitary confinement and sleep deprivation. Cases submitted regarding female Palestinian prisoners and detainees detail instances of physical and verbal assault. Allegations were also made that Israeli authorities have used full or partial strip-searches as a punitive measure against female prisoners and detainees.

75. The Special Rapporteur remains concerned at the treatment of hundreds of Palestinian children arrested, detained and imprisoned each year by Israel (A/HRC/28/78) and recalls that article 37 of the Convention on the Rights of the Child provides that a child may only be deprived of his or her liberty as a measure of last resort. The Special Rapporteur acknowledges the engagement of Israel with the United Nations Children's Fund (UNICEF) regarding recommendations contained in its report of February 2013 in which the organization concluded that "ill-treatment of children who come in contact with the military detention system appears to be widespread, systematic and institutionalized".[49] However, he is dismayed by the limited progress as "reports of alleged ill-treatment of children during arrest, transfer, interrogation and detention have not significantly decreased in 2013 and 2014".[50] It is regrettable that the pilot scheme introduced in February 2014 to issue written summonses to children as an alternative to terrifying night-time arrests was discontinued in early 2015. No evaluation of the scheme reportedly

[47] This was the number classified by Israel as "security" prisoners and detainees. In addition, nearly 1,000 Palestinians were held for being in Israel illegally. B'tselem statistics accessed August 2015. Available from: www.btselem.org/statistics/detainees_and_prisoners.

[48] WHO, document WHO-EM/OPT/006/E, p. 11.

[49] *Children in Israeli Military Detention: Observations and Recommendations* (Jerusalem, February 2013), executive summary.

[50] Ibid., Bulletin No. 2, February 2015, p. 2.

took place to assess the feasibility of ending this harmful practice by way of summonses, which should be delivered during the daytime.[51]

V. Accountability

76. Scores of reports each year document concerns regarding Israeli violations of international law in the Occupied Palestinian Territory. These reports chart the expansion of illegal settlements; document cases of home demolitions, settler violence and excessive use of force by Israeli security forces; and describe the effects of the blockade, the wall and violations committed during escalations of hostilities. The Special Rapporteur, while focusing on his own mandate, is cognizant of reports of civil society[52] and the United Nations, including the report of the 2014 independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 (A/HRC/29/52 and A/HRC/29/CRP.4), the summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents that occurred in the Gaza Strip between 8 July 2014 and 26 August 2014 (S/2015/286, annex) and the report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 (A/HRC/28/80 and Add.1), documenting allegations of violations of international law by both Israeli and Palestinian actors.

77. A general failure of accountability followed previous escalations of hostilities in 2008/09 and 2012. The Special Rapporteur notes Israel's statement following the 2014 Israeli military operation in Gaza that it was "committed to investigating alleged misconduct and holding wrongdoers accountable, through criminal prosecutions or disciplinary action".[53] The Special Rapporteur is aware that some civil society organizations have submitted cases of alleged violations and in some instances have received updates on decisions regarding investigations; however, he notes that, in general, there is little confidence in the process.

78. According to published information regarding examinations and investigations of cases by Israel, as of June 2015, more than half of the approximately 190 cases of allegations of violations had been examined and referred to the Military Advocate General for decision. Of these, 19 cases were closed without further investigation as not having established "reasonable grounds for suspicion of criminal behaviour". Investigations have been opened in 22 cases, 7 on referral following preliminary examinations carried out by the Fact-Finding Assessment Mechanism and 15 on the basis of prima facie evidence.

79. Two of the 22 investigations opened were closed without any further legal proceedings. One of these concerned the attack on 16 July 2014 in which four boys between the ages of 9 and 11 who had been playing on the beach were killed.

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[51] Military Court Watch, "Pilot study to end night arrests suspended", 29 January 2015.

[52] For example: B'tselem, *Black Flag: The Legal and Moral Implications of the Policy of Attacking Residential Buildings in the Gaza Strip, Summer 2014* (Jerusalem, 2015); Breaking the Silence, *This Is How We Fought in Gaza: Soldiers' Testimonies and Photographs from Operation "Protective Edge"* (2014) http://www.breakingthesilence.org.il/pdf/ProtectiveEdge.pdf; Amnesty International, *Unlawful and Deadly: Rocket and Mortar Attacks by Palestinian Armed Groups During the 2014 Gaza/Israel Conflict* (London, 2015).

[53] State of Israel, *The 2014 Gaza Conflict, 7 July-26 August 2014: Factual and Legal Aspects*, May 2015, executive summary, para. 59.

Information published by Israel noted that the attack took place in a Hamas naval compound "which was utilized exclusively by militants". Israel asserted that it was not possible for the Israel Defense Forces entities "to have identified these figures, via aerial surveillance, as children" and that they had been targeted on the presumption that they were militants owing to their presence in the area.[54] This particular case was witnessed by a number of international journalists who were staying in hotels overlooking the beach. The case itself is evidence that the area was in fact not used exclusively by "militants". In addition, the Special Rapporteur notes that reporting on the incident does not give the impression of a closed military compound. A journalist who witnessed the attack wrote: "A small metal shack with no electricity or running water on a jetty in the blazing seaside sun does not seem like the kind of place frequented by Hamas militants.... Children, maybe four feet tall, dressed in summer clothes, running from an explosion, don't fit the description of Hamas fighters, either."[55]

80. The fact that the Military Advocate General accepted the contention that the aerial surveillance was of insufficient quality to allow operatives to distinguish between young children playing and adult members of armed groups carrying out military activity is disturbing. The 2014 independent commission of inquiry found that given that the compound was located in a city centre between a public beach and an area used by local fishermen, "it could not be ruled out that civilians, including children, might be present" (A/HRC/29/CRP.4, paras. 630-633). The Special Rapporteur joins the independent commission of inquiry in its concern that it appears that the Israel Defense Forces "reversed the presumption of civilian status" on the sole basis of the location of figures in the area and, further, that the Military Advocate General, in deciding to close the case without further legal proceedings, "appears to have validated this incorrect application of international humanitarian law" (ibid.).

81. The Special Rapporteur is troubled by the implications of this case for the overall prospects of accountability through Israeli domestic-level investigations. Investigations into other less well-known cases alleging violations by the Israel Defense Forces are unlikely to be scrutinized to the same degree. As of June 2015, one indictment against three soldiers had been issued in a case involving looting in the Shuja'iyya area on 20 July 2014.

82. The Fact-Finding Mechanism is limited in its scope to examinations of "exceptional incidents", which might be read as a predetermination that the Israeli operation was generally compliant with international law. A key criticism made by the independent commission of inquiry was that "The fact that Israel did not revise its practice of air strikes, even after their dire effects on civilians became apparent, raises the question of whether this was part of a broader policy which was at least tacitly approved at the highest level of government".[56]

83. In a response to the report of the independent commission of inquiry, the Israeli Ministry of Foreign Affairs stated that "Israel's military acted according to the highest international standards. This was confirmed by a comprehensive

[54] Israel Defense Forces Military Advocate General, "Decisions regarding exceptional incidents that allegedly occurred during Operation 'Protective Edge'", Update No. 4, 11 June 2015, para. 7.

[55] Tyler Hicks, "Through lens, 4 boys dead by Gaza shore", *New York Times*, 16 July 2014.

[56] OHCHR, "UN Gaza inquiry finds credible allegations of war crimes committed in 2014 by both Israel and Palestinian armed groups", press release, 22 June 2015. See also A/HRC/29/52, para. 44.

examination by Israeli military and legal experts, as well as reports produced by internationally renowned military professionals".[57] The Special Rapporteur found this broad claim to be generally unsupported by submissions received and public United Nations and civil society reports. However, he encourages Israel to demonstrate its commitment to accountability by acceding to the Rome Statute of the International Criminal Court. In addition to a number of other considerations, the Court will only become involved where domestic mechanisms have shown themselves unable or unwilling to investigate and prosecute the gravest crimes.[58]

84. Regarding civil claims for violations of international law, as noted by the independent commission of inquiry, "Palestinian victims face significant obstacles that impede their right to benefit from effective remedies, including reparations" (A/HRC/29/52 para. 72). One such obstacle is the sweeping exemption of State liability, under the Law on Liability of the State, for any actions taken in the context of combating "terror, hostile acts or insurrections" (A/HRC/29/CRP.4, paras. 646-649). Further, high fees, restrictions on movement and statutes of limitations make it nearly, if not completely, impossible for victims to seek reparations. In December 2014, the Supreme Court of Israel rejected a petition challenging the Israeli policy of denying claimants and witnesses in Gaza seeking compensation for deaths, injuries and property damage resulting from Israeli military actions access to Israeli courts.[59] According to information received — and raising obvious questions of conflict of interest — the decision accepts that the State has discretion to deny entry, on the grounds of "security considerations", in compensation cases against the State. On the implications of the decision for access to the courts by claimants in Gaza in compensation cases, Adalah, the Legal Center for Arab Minority Rights in Israel, concluded that "essentially no such opportunity exists".

85. In the West Bank too, and generally outside the context of acts committed during active hostilities, access to justice for Palestinians via the military justice system and Israeli courts is lacking. Impunity for acts of settler violence has been widely reported. Similarly, accountability is generally lacking in cases of excessive use of force by Israeli security forces and several interlocutors reported that victims either had no faith that they would receive justice or were afraid to come forward. As reported by UNRWA, "victims/survivor families commonly refrain from raising formal complaints with the Israeli authorities for fear of reprisal. Israeli security forces' internal investigations into Palestinian fatalities ... are closed in the vast majority of cases". Whether a case concerns settler violence, excessive use of force by Israeli security forces, protesting one's innocence against allegations of, for example, stone-throwing, or contesting the legality of threatened forced evictions, demolition orders, land confiscations or the construction of the wall,[60] there is a pervasive sense of injustice in a system which appears inevitably pitted against the protected population.

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[57] Israel Ministry of Foreign Affairs, "Israeli response to the UNHRC Commission of Inquiry", press release, 22 June 2015, para. 5.

[58] Rome Statute of the International Criminal Court, articles 1 and 17.

[59] Al Mezan Center for Human Rights, Palestinian Centre for Human Rights and Adalah, "Israeli Supreme Court approves regulations that ban Palestinians from Gaza from entering Israel for their compensation cases against the Israeli military", press release, 18 December 2014.

[60] Engaging articles 2 and 14 of the International Covenant on Civil and Political Rights.

VI. Conclusions and recommendations

86. The cumulative effects of Israeli occupation policies and practices, most prominently settlement expansion and related impacts, the blockade, movement restrictions and the military justice system, are having a debilitating effect on Palestinian society. Avoiding further destabilization requires that the routine violations of the human rights of the Palestinian people living under occupation be addressed. Critically, without accountability, 48 years of occupation have shown that Israeli policies and practices, which run counter to international human rights law and international humanitarian law, will continue.

87. Accordingly, the Special Rapporteur reiterates recommendations previously made (A/HRC/28/78) and presents and re-emphasizes the following recommendations to the Government of Israel:

(a) Lift the blockade on Gaza, which is a primary obstacle to reconstruction, undermines human rights and constitutes collective punishment;

(b) Ensure that domestic-level investigations provide accountability, including by widening the scope of investigations to include the legality under international law of policy decisions guiding the Israel Defense Forces during the 2014 military operation in Gaza;

(c) Halt settlement expansion and refrain from demolitions in the West Bank, including East Jerusalem. In particular, halt and abandon the plan entailing the forced eviction and forcible transfer of Bedouin communities in Area C;

(d) Ensure compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990 and conduct full investigations into cases of excessive use of force by Israeli security forces and into allegations of settler violence;

(e) Remove procedural and physical barriers, including the wall, that obstruct access to health care for Palestinians in Gaza and the West Bank, including East Jerusalem;

(f) Ensure that all Palestinian schoolchildren in East Jerusalem have access to education, in particular by addressing the shortage of classrooms, and enable them to follow the curriculum set by the Palestinian Ministry of Education;

(g) End the practice of administrative detention and respect the right of Palestinian prisoners and detainees to peaceful protest, including by refraining from force-feeding those who engage in hunger strikes;

(h) Urgently redouble efforts to implement recommendations by UNICEF with respect to the detention of children, in particular, ensuring that children are detained only as a last resort;

(i) Cooperate with the Special Rapporteur and any United Nations-mandated body, as required of a State Member of the United Nations, and facilitate access to the Occupied Palestinian Territory.